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ABSTRACT

This discussion of the impact of copyright laws and regulations on universal availability of publications examines the historical and conceptual foundations of copyright as it has developed in Europe, with special emphasis on the current copyright laws of the Nordic countries. A detailed analysis of the provisions of these laws is used to illustrate the restrictions on the copying of different forms of literature, specific publication types, and other original print and nonprint materials; the implications of legal deposit; the effect of modern copying techniques; the relationship of Nordic copyright laws to existing international agreements; and their cumulative effect on the universal availability of publications. A general discussion of the international state of copyright laws as they affect IFLA's support of universal availability of publications concludes the paper. (RAA)

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COPYRIGHT AND LIBRARIES - A SCANDINAVIAN APPROACH

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COPYRIGHT AND LIBRARIES - A SCANDINAVIAN APPROACH

Whereever there are libraries, one will find problems of copyright, and their numbers have grown with the rapid development of all kinds of reproduction, photocopying, xeroxing, tapes, etc. a development so favourable for the libraries.

It has been generally accepted for a couple of hundred years that the persons who produce works intellectual achievement be it literary, artistic or scientific, need some kind of protection against piracy. Already by 1709 England had a copyright act and Denmark/Norway passed their first law against piracy in 1741 and Sweden something similar in 1752. Before that time, what we today call plagiarism or imitation was a commonplace and an unpunishable phenomenon which of course gave rise to big problems after the invention of the art of printing. We know that f.ex. Martin Luther complained bitterly about the many pirated editions of his books in abridged or irregular forms "It is dirty tricks, he said, to delude the common man under our names" and he characterize the offenders as thiefs and highwaymen.

If one wanted protection in the old days, one could, at least in Scandinavia obtain a royal privilege which gave one the right to print and sell a particular work. Even though such privileges were mainly given to printers or authors who were their own editors, it soon became common practice that printers' privileges depended on the author's permission - and he could in turn let his permission depend on payment, for instance per book sold.

But let me go straight to the laws and legislations that we have today in the Nordic countries, which have evolved and come into realisation after many years of Nordic cooperation between leading lawyers, commissions etc. The Nordic acts establish that someone who produces a literary work has the copyright or ownership of that work. He is the arbitrary master of that work and others are forbidden to use his work without his permission. He has the right to the economic proceeds it might bring, the right to decide whether it shall be printed, translated, transferred to a tape and so on. If he wants to transfer his right to others, for instance a

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publishing house, there are certain rules for such a transfer. That we are indeed talking about ownership is clear, as the copyright passes on to the author's heirs after the normal law of heredity. But even if society wishes, rightfully, to give an author protection, it is necessary however that there are certain restrictions in the protection, just as owners of material goods in modern society have to cope with similar restrictions. It is assumed that producers of literary and artistic works add to the cultural heritage of society and civilisation, and that society has a certain right to benefit from these values. Therefore, in order not to limit the spreading of information and culture, some restrictions have to be made to the rights of the producer. The sections in the law which relate to these restrictions are an integrated part of the copyright act. I shall later return to these restrictions, which are of value to the libraries, but before doing so, it would make sense to ask oneself, what type of mental achievements it is that the law protects. Obviously, it cannot be all. In the law expressions like "intellectual achievements", "literary and artistic works" are used - and the following reflections only cover the literary ones.

In the law literary works are defined as written or oral fictious or descriptive representations and maps and drawings. But even with this phrasing it is necessary to make certain demands on a work before it can be protected. What one wants to protect is, as it is called, "an achievement of creative work of the mind" and to fulfill this description, two demands are usually made, originality and individuality.

In order to be original, the work must of course not be an imitation. One may seek ideas, thoughts and subjects from other works and one may use the same motives as other authors, but the rendering that the author gives, must be so personal that we can talk about a new and original work. It is obvious that scientific works come under the law, but it must be stressed that it is the rendition which is protected and not for instance, a new discovery. The scientist who makes the most sensational new discovery of technical importance does not get any right of protection on the discovery itself, but his oral or written descriptions are protected as a literary work.

No demands are made on the literary or scientific quality of the work, even the lousiest novel can come under the copyright act, as long as it is original and independent. No demands are made

on the size or volume of the work, even a short advertizing slogan is protected, if it is original and also titles of books and films must possess a certain self-dependence, some mental function must be present.

It is unlikely that a list of books, stating when and where they have been published, will be protected. But if we talk about a selective bibliography or a classified index, it will be. A product which does not immediately manifest itself as being original or individual either written or orally, - here I am thinking of the mental activity which is displayed by editors of encyclopedias or anthologies - may also be protected. The activity which shows itself in the disposition and composition of the work is protected, but the various contributors to the work of course keep their individual copyright. This means that a publishing house has no right to reprint a general encyclopedia without the permission of the editor, even though it has permission from all the individual authors. I can also mention that the editor of a periodical cannot decide whether reproduction of single articles is permitted or not - that is up to the authors. All acts of Parliament, administrative instructions and regulations, judicial decissions and other public documents are excluded from copyright protection.

I shall not go further into the many rules which relate to the copyright act. In short, one can say that when we have a work which is original and is the result of creative thinking, then its author will have wide protection, which will also secure him the economic proceeds. But society looks upon all protected works as part of its cultural heritage and has therefore made some exceptions to the author's right as the sole person who may duplicate the whole or parts of his work.

I shall in short mention some restrictions in the copyright. There is for instance the right of quotation, by which it is allowed, in a fair way, to quote short parts of a literary work. The right to include literary works in school-books, however for a fee. The right to transfer works to the Braille alphabet for the blind people or others who are not able to read because of invalidity, may use it.

As another restriction in the copyright one may also mention the statute of limitations. While a physical object may be passed on from generation to generation through the centuries, it has, for

cultura reasons, been decided that the copyright protection be discontinued after the author has been dead for 50 years, or, if the work is anonymous, 50 years after the date of publication. This is a fact which libraries must be aware of, as it means that all older works carry no restrictions as far as copying is concerned.

There is, however, one kind of protection which is not time-limited, that is the so-called "droit moral", which include two separate rights, droit à la paternitè and droit au respect. This is the protection which the State gives to a free work, which ensures that the work is not published without the author's name, or in a way or in a form offensive to cultural interests or insults the author's posthumous reputation.

A restriction in the authors' and composers rights, which is very important to all libraries, is that the act in force explicitly states that all published books and music may be lent through the libraries - this has in Denmark caused a lot of discussion and several court cases.

Thus the authors cannot stop their works from being obtained and utilized by libraries. But native authors in the Scandinavian countries are through special acts about Public lending rights safeguarded a not inconsiderable economic reward for the use Public Libraries make of their works - but this very important subject is not on our agenda today, so I will not go further into it.

I have though that it would be of interest to the audience to know some of the main-principles of a typical European legislation concerning works of intellectual achievement and this is why I have given this rather lengthy introduction before going to the two clauses which are of main importance to libraries.

Paragraph 11 in the Danish act says: "A few copies of a published work may be produced for privaye use, but they must not be exploited in any other way". It is especially the phrasing "private use" which has caused endless discussions and brought forth many interpretations.

First it must be stressed that the right to copy for private use applies only to published works. This means that it is forbidden, even for private scientific use, to take a photocopy of a manuscript, unless one has the author's permission. The same applies to letters, where the writer has the copyright, even if the letter physically or legally is owned by the receiver. The paragraph also states that the private use does not have to make the copy.

himself, he may leave it to a commercial firm or a library. But neither a company or a library may advertise or in other ways try to provoke a large number of requests and thereafter produce many copies of the work.

This means that the library, when the research worker or library user places a request for a copy of an article or even a complete book, may proceed with the copying without any problems with or without charge. Only one copy may be handed out, but nothing can stop the user coming to the library every day and ordering one copy. However, if the suspicion arises that the user for instance sells the copies the request should be refused. Even though in principle it is the user who has the responsibility of whether it is private use or not, the library should sefeguard itself against possible accusations of complicity in breaking the law be stamping all copies "For private use only". In the case of short articles or parts of a book, the library, however has the right to produce an unlimited number of copies and hand out a copy to each user, which means that a professor may notify the library that his students will need this or that article, after which the library may produce as many copies as are needed.

Private use, in the legal sense, also applies even if the use implies a certain economic exploitation of the copied material. It is also assumed however that bodies like a company, a research institute or any other collective may request a copy of a book or article for its own use, or produce a copy itself, for instance for its library.

It is obvious that this paragraph has been looked upon with much anxiety and concern by the organisations of authors and especially publishers. It is claimed, that the spread of copying, not least after the introduction of the xerox-machine threatens the publishing of periodicals in a very serious manner. Documentation centres which service a large number of persons and institutions, now only need to subscribe to a single copy of a certain periodical, after which the distribution takes place with the help of xerox copies.

On the other hand the publishers have to admit that photocopying in today's distribution of information is such a large factor that it cannot just be stopped, also it is impossible to keep efficient control.

What has been done in the Nordic copyright acts - and in many other countries as well - is to lay down that libraries ought to

have preferential treatment. Let me add that when special rules are needed for the libraries, it is due to the fact that the copying made in the libraries is for public use. The special rules which apply to libraries and archives, are only meant for the real public libraries those that are run more or less by the State. That a company library liberally opens its collection for other than company employees does not make it public in this sense of the word.

In the regulations permission is given firstly to make copies of books, newspapers, manuscripts - for security reasons. Thereafter it is stated that libraries from their own material may make at most two copies of books, which are not found suitable to be lent in their original state, either because of value, rarity or lack of durability.

This regulation is, as a matter fact, very liberal as the libraries are free to decide which material comes under this criterium. When a limitation of two copies has been made, it is of course to ensure that for instance a textbook is not reproduced in many copies only because it is out of print and difficult to buy. Were this the case, one would to a large extent limit the publishers' possibilities of issuing reprints or new editions.

From the paragraph one would think that manuscripts, letters and other non-published material also come under it, but that has not been the intention, as it has been specifically noted that when it comes to such material, the permission of the author must be sought. This cumbersome procedure for obtaining permission is not present in the Danish regulation, as the right to copy stands, unless otherwise stated, that is, that one has only to get permission from the author if there is a special clause of unavailability or the like.

Paragraph 3 of the regulation's is very important. This lay down the much used right for libraries to give users a copy of single articles in collective works, newspaper articles and short excerpts from books, without a special requisition from the user. It is assumed that the copy is for studies or research - which is luckily a wide concept - and only one copy per user may be handed out. This paragraph is of course crucial for the international and inter-library loan system.

Paragraph 4 deals with rules regarding the right to copy missing pages. It lays down that libraries may try to obtain a

complete work from another library and from that copy what they themselves miss. The completion may only be of a minor, not a major part of the work and may only be done if a complete copy cannot be purchased from the bookseller or editor or if the purchase will be excessively expensive.

Regarding the whole volume of a work or an issue of a periodical, the rules are the same in all Scandinavian countries. It is demanded that one has to try buying the missing item, rather than copying it. It is, however, not necessary to try every single second-hand bookstore, it is sufficient to ask the library's normal supplier assuming that he checks with the publisher.

Finally there are rules regarding legal-deposit libraries. These libraries have the right to make one copy of any work which comes under the legal-deposit act, and is unobtainable from the depositor or cannot be purchased anywhere.

The Norwegian, Finnish and Swedish acts also have special rules regarding the production of talking books for physically handicapped, which is not the case in Denmanrk. It should be noted that the rules also apply to the copying of photographs.

Unfortunately, one thing is missing from the regulations for the special rights of libraries concerning copying, and that is the rule about the right to transfer grammophone records to cassette tapes in order to use them, amongst other things, for lending. Particularly since the public libraries have gone in for both, speech and music records, in a big way in recent years, it is a pity that there is no possibility to spare the record by transferring it to a tape. However, I think it will be most difficult to inroduce such a rule. It will be necessary, at least for the time being, to come to an agreement with the holders of the copyright about payment, but this presents another difficulty, as a music record has so many originators - composers, conductors, musicians, possibly text authors - and at last,but not least, the grammophone company.

In Denmark the negotiations which have been held about this problem have so far, led to no results, while in Sweden the libraries have come to a favourable agreement with the Swedish organisation of composers.

It should be added that the period of limitation for grammophone records is only 25 years.

Music scores follow roughly the same rules as books. They fall under the category literary or artistic works, but the

Norwegian act has a definite clause saying that the copying of music for private use must not take place with foreign assistance. This clause seems reasonable enough, when one takes into consideration how expensive it is to produce music and how few copies are made, for instance of a score.

You cannot blame the Scandinavian copyright acts for disregarding the special copyright problems relating to EDB. That such problems exist is obvious and some of them will no doubt have some influence on the libraries. No doubt an EDB-programme for some bibliographic task or other is a mental achievement and it must be legal to feed the computer with a protected work which is stored there and used for retrieval of bits of information, - this must come under the right of quotation. However, if the work is produced in full, it is legal no more.

An intricate question arises, if you let the computer translate a work, - who has the right to that translation? I think, in this connection, that computer-translations will violate the "droit moral" ruling. What I have been covering so far, are the rules and regulations which exist in the Scandinavian countries, but the law of copyright is a legal field which has a very international character. How are the libraries' relations for instance, to an article in a Japanese or German periodical? Must one know the copyright laws of Japan or Germany in order to answer that question?

It is not that difficult. Due to interrational conventions and agreements a system of reciprocity has been established among the various countries which, roughly speaking, means that any copyright problem arising may be solved according to the rules prevailing in the country in question, be the author, publisher or whatever a foreigner or a native.

The oldest convention is the Bern-convention, dating back to 1886 and having been revised several times in order to strenghten the protection of the authors rights. For the benefit of many new nations, one has, since 1952, had the so-called Universal Copyright Convention, administrated by UNESCO, which is far less demanding and therefore can be subscribed to by many more nations.

All the Nordic countries have signed both conventions as it's the case with a lot of other states. The Bern convention is signed by 65 nations and this means that works from these countries enjoy the same protection in the Nordic countries as in their own. However, some reservations have been taken regarding the period of limitation.

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Lastly, let me add that Nordic works are protected under the Bern Convention without any formalities whatsoever, while to obtain protection under the World convention, one must comply with the simple condition that a C must be printed on the title-page of each book together with the name of the copyright holder and the first date of publication.

The Nordic countries have got copyright laws which to a great extent take the libraries' needs into consideration. Of course one might, from the libraries' point of view, wish for more freedom, but the libraries must look at themselves as links in the great chain of information where publishers and authors are just as important.

We must be aware that the rules are watched critically, not least by the publishers, and it cannot be denied that the development within the copying process, the reduction in price etc. and not least the newest EDB-development of "electronic post" and the C.O.M.-procedure (Computer-Output-On-Microfilm) where there is no paper-original as a basis document contains certain perspectives which might cause some alarm or at least debate concerning very complicated legal problems. I do not think that the libraries further own cause if they systematically try to neglect the copyright laws, looking for loopholes in the laws or making too subtle interpretations in their own interest.

In our daily work we do a lot for the authors and researchers and there is no reason to trouble them directly or indirectly in the field of copyright. We have, and we must have, at good relationship with the publishers, and although I do not stand here to plead their cause, I do, however, warn against regarding them as enemies of the libraries. The ideal would be, if one, also in the copyright field could reach a moral code, where one mutually respected each others interests and met in open cooperation.

I think that we all here, members of IFLA and strong supporters - I do hope - of the important UAP-programme must recognize that we - the librarians - cannot develop this big international programme solely by our own means. We need the help and acceptance from other links in the chain, but it is in my opinion our duty to take the initiative to develop a fair cooperation with the owners of the copyrights on the basis of our national legal instrument.

The explosive development of the reproduction technique has caused a widespread secondary exploitation of protected materials within the libraries. The central problem is: How to protect, legally, the authors so that the libraries' possibilities of fulfilling their central function as banks of scientific information shall not deteriorate.

To the libraries and their users, the system of getting a copy instead of borrowing the original entails many advantages: The original is available for consultation - less wear and tear - faster and cheaper service - no deposit, no return - sometimes copying is the only possibility. IFLA's new programme, UAP (Universal availablity of Publications), the increased demand for the SDI-service and the future automatisation of library routines will only step up the demand for this quick service.

At present, the situation is favourable. National committees have been set up, and they have been given the task of making a survey of the entire field of copyright. Their instructions say, among other things, that they must find administratively simple solutions for compensating the authors, when the exploitation of protected material may damage the authors' economy. Does library copying come into the picture here? The committees will cooperate and the goal shall be a pan-Scandinavian set of laws, which does not infringe the rules of the two international conventions, the Bern convention and the World convention.

The American copyright act was put into force on the 1st of January, 1978. Paragraph 108 stipulates the rules for library copying and the so-called CONTU-guidelines control the copying rules for inter-library loans.

Paragraph 108 forbids the libraries to engage in "systematic reproduction or distribution of single or multiple copies" and deprives the receiving library of the right to accept copies in aggregate quantities that it may be supposed that the copies replace a subscription for a periodical. The CONTU-guidelines lay down, what is not "aggregate quantities". The libraries may make:

1. Up to 6 copies of an article per calendar year from a periodical published within the last five years.
2. Up to 6 copies of small parts of a longer work (even fiction and anthologies) per calendar year.

In the guidelines to paragraph 108 it is further stipulated that it is the requesting library which has to follow the rules and keep the records for three years after the request have been received.

The above means for the libraries:

1. A reduction in the access to scientific information.
2. Increased work for the requesting library.

A solution which seems much more advantageous for the libraries is suggested by the Australian Franki-Committee (December 1976). The Committee recommends that libraries in non-commercial educational institutions should have the right to make:

1. Up to 6 copies of periodical articles (nothing is mentioned about publishing dates or period of limitation).
2. Up to 6 copies of major parts, other than articles, out of a published work, if the part has not been published separately.

The English Whitford-committee (March 1977) suggests a blanket license-system which will replace the rules in section 7 of the present copyright act of 1956.

The system should work as follows:

1. An agreement should be made between the users and the authors, who are represented by central collection societies, about the use of protected material, involving the payment of a lump sum per year.
2. The amount of the sum should be decided on an approximate calculation, based on the degree of use.
3. The collecting society will, in turn, hand out the compensation to the individual copyright holders in order that this may work out as just as possible, some kind of reporting or spot checking is needed for the users.
4. The collecting societies should be few (one for books and one for periodicals) and they should be authorised by the relevant ministry.
5. If the sides cannot come to an agreement, a copyright jury will make the final decision.

The reproduction of works must still be a limited activity and the copying must not conflict with the copyright holders' normal income. It is, for instance not allowed to distribute free copies to the public.

(2) In West Germany, a system of general agreements is visualised, but it will be combined with a levy on reproduction apparatus for "multiple copiers", to which the libraries must belong.

(3) These systems imply a lot of problems for the libraries:

1. The systems demand that the sides get organised. They put more work on the libraries and demand more personnel.
2. An important question is: Who has to pay the compensation? Must the individual users pay for it in the form of high copy prices? This would favourise well-to-do users, for instance firms and companies. Should the money come out of the libraries' own funds? This would mean increased budgets. It would be fatal if one had to cut down on the copying service. Should the State intervene and foot the bill?

Neither the Whitford-committee nor the solution proposed in West Germany give detailed instructions about how to put these systems into practice. If a system, involving compensation, should become reality in the Nordic countries, it should be up to the libraries to study this system very carefully and see how it would influence their activities.

Helmuth Arntz maintains, in an article "Reprography and copyright" that it, in future, will not be possible to control copying. Micro-publishing will soon replace ordinary printing. The compensation will not be based on the copy any more, as it will be identical to the original. Using the C.O.M. procedure (Computer Output on Microfilm) we don't even have a paper original. The microfilm may later be duplicated or copied. Arntz claims, as the only solution, that a levy be put on all apparatus which can reproduce protected material. This solution does not influence the spreading of information in any great way, and at the same time it guarantees the author a reasonable income. It does not always levy the copier justly, nor does it always pay the author his rightful dues, but this has to be accepted, says Arntz.

Xavier Desjeux discusses the problems of the periodical editors and comes to the conclusion, that the prolific copying threatens their activities. The copyright acts are not made to defend "the economic interests of the person who retails in ideas". To the scientific author, the commercial goal is not the most important, but to the publisher, it is. Desjeux does not believe in any changing of the law, he does not believe in any legal solutions involving a system of compulsory fees. If the general

agreements, which have been proposed in England and West Germany, do not get a chance, the only way out will be the introduction of a levy, or tax, on reprographic apparatus. The publishers must make themselves heard, if this is to be the case.

Copying on machines

When it comes to unguarded machines, which are operated by individuals in libraries, the suggestion is that the libraries should not be held responsible for illegal copying, if they provide posters, telling about the rights of the copyholder. The Whitford-committee, in this respect, is an exception, because it finds that a poster or notice is not sufficient, - a special license is needed in this case.

The sources on which this paper is based are:

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